

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
ACS of Anchorage, Inc. and ACS of)	
Fairbanks, Inc.'s Emergency Petition for)	
Declaratory Ruling and Other Relief)	WC Docket No. 02-201
Pursuant to Sections 201(b) and 252(e)(5))	
Of the Communications Act)	
_____)	

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to the *Public Notice* released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB)² and pursuant to sections 1.415 and 1.419 of the Commission's rules,³ hereby submits its reply comments on the Emergency Petition for Declaratory Ruling and Other Relief Pursuant to Sections 201(b) and 252(e)(5) of the Communications Act (Petition), which was filed by ACS of Anchorage, Inc. and ACS of Fairbanks, Inc. (collectively ACS). Many substantive issues were raised in the Petition; however, in its *Public Notice*, the Commission only sought comment on the preemption issue of whether the Regulatory Commission of Alaska (RCA) failed to act under Section 252(e)(5) of the Telecommunications Act of 1996 (1996 Act), thereby authorizing the Commission to

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² *Public Notice*, WC Docket No. 02-201, DA 02-1847 (rel. July 30, 2002) soliciting comment on the Emergency Petition for Declaratory Ruling filed by ACS of Anchorage, Inc. and ACS of Fairbanks, Inc.

³ 47 C.F.R. §§1.415 and 1.419.

preempt the RCA's jurisdiction. The preemption issue in the Petition centers on ACS' claim that the RCA failed to act to carry out its responsibility under the pricing provisions of Section 252(d)(1) by setting unbundled network element (UNE) rates that are not in accord with the Commission's rules and requirements that network element charges be based on the total element long-run incremental cost (TELRIC) of providing the network element. Based on the claims set forth in ACS' Petition, USTA supports the preemption request and urges the Commission to grant such request.

DISCUSSION

In its Petition, ACS sets forth that the RCA has failed to set UNE rates that are in accord with the cost-based pricing principle of the TELRIC methodology.⁴ In addition, ACS emphasizes that no cost study based on costs in Anchorage was conducted and that the cost study ACS submitted based on its forward-looking costs for costs in Fairbanks was disregarded by the RCA.⁵ Failure to conduct and consider cost studies that are based on ACS' costs does not comply with the Commissions pricing rules.⁶ Likewise, failure to set rates that are based on the TELRIC methodology and that are based on the most efficient telecommunications technology, given the existing location of ACS' wire centers, does not comply with the Commissions pricing rules.⁷ As the United States Supreme Court (Supreme Court) has made clear on more than one occasion, state commissions are bound by the Commission's jurisdiction with regard to pricing methodology.⁸ The pricing methodology that the Commission has established, and which the

⁴ See Petition at 31.

⁵ See Petition at 32, 34.

⁶ See generally 47 C.F.R. §51.505.

⁷ *Id.*

⁸ See *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 385 (1999) and *AT&T Corp. v. Iowa Utilities Bd.*, 535 U.S. ___, ___, 122 S.Ct. 1646, 1664 (2002).

Supreme Court has affirmed,⁹ is TELRIC¹⁰ and the Commission's rules state that such costs must be based on the "most efficient telecommunication technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers."¹¹ Accordingly, the RCA is obligated to apply federal law – the pricing standards set forth in Section 252(d)(1) of the 1996 and the Commission's pricing rules found in 47 C.F.R. §51.505 – when it sets the rates for UNEs that ACS must provide to other carriers. The RCA's failure to apply this law and to set UNE rates accordingly triggers the application of Section 252(e)(5). Specifically, the RCA's failure to carry out its responsibility to implement UNE rates that comply with the 1996 Act and the Commission's rules requires the Commission to preempt the RCA's jurisdiction on such price setting.

For these reasons, USTA supports ACS' request that the Commission preempt the RCA's jurisdiction to set prices for UNEs and USTA urges the Commission to take that action.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

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⁹ See *AT&T Corp. v. Iowa Utilities Bd.*, 535 U.S. ___, ___, 122 S.Ct. 1646, 1678-1679 (2002).

¹⁰ Although USTA does not necessarily agree with the use of the TELRIC methodology, it does recognize that TELRIC is current federal law.

¹¹ See 47 C.F.R. §51.505(b)(1).